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STATE OF NEBRASKA

**STATUTES RELATING TO
LICENSES, PROFESSIONAL AND OCCUPATIONAL
(UNIFORM LICENSING LAW-Sections Relating To Nursing)**

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM



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STATUTES RELATING TO LICENSES, PROFESSIONAL AND OCCUPATIONAL-Sections Relating To Nursing

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STATUTES RELATING TO LICENSES, PROFESSIONAL AND OCCUPATIONAL-Sections Relating To Nursing

REVOCATION OF LICENSES AND CERTIFICATES

71-147. License, certificate, or registration to practice a profession; disciplinary actions; grounds. A license, certificate, or registration to practice a profession may be denied, refused renewal, limited, revoked, or suspended or have other disciplinary measures taken against it in accordance with section 71-155 when the applicant, licensee, certificate holder, or registrant is guilty of any of the following acts or offenses:

- (1) Fraud, forgery, or misrepresentation of material facts in procuring or attempting to procure a license, certificate, or registration;
- (2) Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state;
- (3) Habitual intoxication or dependence or failure to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program established pursuant to section 71-172.01;
- (4) Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the applicant's, licensee's, certificate holder's, or registrant's fitness or capacity to practice the profession;
- (5) Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with manifest incapacity, (d) with gross incompetence or gross negligence, or (e) in a pattern of negligent conduct. Pattern of negligent conduct shall mean a continued course of negligent conduct in performing the duties of the profession;
- (6) Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability;
- (7) Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means;
- (8) Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license, certificate, or registration by a person not licensed, certified, or registered to do so;
- (9) Having had his or her license, certificate, or registration denied, refused renewal, limited, suspended, or revoked or having had such license, certificate, or registration disciplined in any other manner in accordance with section 71-155 by another state or jurisdiction to practice the particular profession involved, based upon acts by the applicant, licensee, certificate holder, or registrant similar to acts described in this section. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration or the taking of other disciplinary measures against it by another state or jurisdiction shall be conclusive evidence;
- (10) Unprofessional conduct;
- (11) Use of untruthful or improbable statements or flamboyant, exaggerated, or extravagant claims, concerning such licensee's, certificate holder's, or registrant's professional excellence or abilities, in advertisements;
- (12) Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
- (13) Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
- (14) Willful or repeated violations of the Uniform Licensing Law or the rules and regulations of the department relating to the licensee's, certificate holder's, or registrant's profession, sanitation, quarantine, or school inspection;
- (15) Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the licensee, certificate holder, or registrant is not licensed, certified, or registered to practice;
- (16) Failure to comply with sections 71-603.01, 71-604, 71-605, and 71-606 relating to the signing of birth and death certificates;
- (17) Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;
- (18) Purchasing or receiving any prescription drug from any source in violation of the Wholesale Drug Distributor Licensing Act;
- (19) Violation of the Emergency Box Drug Act;
- (20) Failure to file a report required by section 71-168;
- (21) Failure to disclose the information required by section 71-1,314.01;
- (22) Failure to disclose the information required by section 71-1,319.01; or
- (23) Failure to disclose the information required by section 71-1,206.34.

A license, certificate, or registration to practice a profession may also be refused renewal or revoked when the licensee, certificate holder, or registrant is guilty of practicing such profession while his or her license, certificate, or registration to do so is suspended or is guilty of practicing such profession in contravention of any limitation placed upon his or her license, certificate, or registration.

This section shall not apply to revocation for nonrenewal as set out in subsection (1) of section 71-149 and sections 71-110 and 71-161.10.

Source: Laws 1927, c. 167, §46, p. 466; C.S.1929, §71-601; Laws 1943, c. 150, §10, p. 541; R.S.1943, §71-147; Laws 1976, LB 877, §1; Laws 1979, LB 95, §1; Laws 1986, LB 286, §45; Laws 1986, LB 579, §37; Laws 1986, LB 926, §24; Laws 1987, LB 473, §15; Laws 1988, LB 1100, §16; Laws 1991, LB 456, §7; Laws 1992, LB 1019, §37; Laws 1993, LB 536, §44; Laws 1994, LB 1210, §25; Laws 1994, LB 1223, §6; Laws 1997, LB 622, §79; Laws 1999, LB 366, §8; Laws 2001, LB 398, §20; Laws 2005, LB 301, §9. Operative date September 4, 2005.

71-147.01. Peer review committee; health practitioners; slander, libel, defamation of character, privileged communication, or other actions; exempt; when. No member of a peer review committee of a state or local association or society composed of health practitioners licensed pursuant to the provisions of Chapter 71, article 1, shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such committee, if such committee member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him after a reasonable effort is made to obtain the facts on which such action is taken or recommendation is made.

Source: Laws 1976, LB 586, §1.

71-147.02. License, certificate, or registration; temporary suspension or limitation; notice and hearing not required; when; duration. The department may temporarily suspend or temporarily limit the license of any licensee, the certificate of any certificate holder, or the registration of any registrant without notice or a hearing if the director determines that there is reasonable cause to believe that grounds exist under section 71-147 for the revocation, suspension, or limitation of the license, certificate, or registration and that the licensee's, certificate holder's, or registrant's continuation in practice would constitute an imminent danger to the public health and safety. Simultaneously with any such action, the department shall institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the license, certificate, or registration. Such hearing shall be held no later than fifteen days from the date of such temporary suspension or temporary limitation of the license, certificate, or registration.

A continuance of the hearing shall be granted by the department upon the written request of the licensee, certificate holder, or registrant, and such a continuance shall not exceed thirty days. A temporary suspension or temporary limitation order by the director shall take effect when served upon the licensee, certificate holder, or registrant.

In no case shall a temporary suspension or temporary limitation of a license, certificate, or registration under this section be in effect for a period of time in excess of ninety days. If a decision is not reached within ninety days, the licensee, certificate holder, or registrant shall be reinstated to full licensure, certification, or registration unless and until the department reaches a decision to revoke, suspend, or limit the license, certificate, or registration or otherwise discipline the licensee, certificate holder, or registrant.

Source: Laws 1986, LB 926, §26; Laws 1991, LB 456, §10; Laws 1994, LB 1210, §26. Operative date July 16, 1994.

71-148. License, certificate, or registration to practice a profession; revocation or suspension; unprofessional conduct, defined. For purposes of section 71-147, unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or occupation or the ethics of the profession or occupation, regardless of whether a person, patient, or entity is injured, or conduct that is likely to deceive or defraud the public or is detrimental to the public interest, including, but not limited to:

- (1) Solicitation of professional patronage by agents or persons, popularly known as cappers or steerers, or profiting by the acts of those representing themselves to be agents of the licensee, certificate holder, or registrant;
- (2) Receipt of fees on the assurance that a manifestly incurable disease can be permanently cured;
- (3) Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a patient;
- (4) Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
- (5) Cheating on or attempting to subvert the licensing or certification examination;
- (6) Assisting in the care or treatment of a patient without the consent of such patient or his or her legal representative;
- (7) Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that such person is entitled to practice a system or mode of healing for which he or she is not licensed, certified, or registered;
- (8) Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
- (9) Willful betrayal of a professional secret except as otherwise provided by law;
- (10) Making use of any advertising statements of a character tending to deceive or mislead the public;
- (11) Advertising professional superiority or the performance of professional services in a superior manner;
- (12) Advertising to guarantee any professional service or to perform any operations painlessly;
- (13) Performance by a physician of an abortion as defined in subdivision (1) of section 28-326 under circumstances when he or she will not be available for a period of at least forty-eight hours for postoperative care unless such postoperative care is delegated to and accepted by another physician;

(14) Performing an abortion upon a minor without having satisfied the notice requirements of sections 71-6901 to 71-6908;

(15) The intentional and knowing performance of a partial-birth abortion as defined in subdivision (9) of section 28-326, unless such procedure is necessary to save the life of the mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself;

(16) The providing by a massage therapist of sexual stimulation as part of massage therapy;

(17) Violating an assurance of compliance entered into under section 71-171.02;

(18) Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession or occupation of the applicant, licensee, certificate holder, or registrant;

(19) Failure to keep and maintain adequate records of treatment or service;

(20) Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;

(21) Prescribing any controlled substance to oneself or, except in the case of a medical emergency, to one's spouse or child; and

(22) Such other acts as may be defined in rules and regulations adopted and promulgated by the board of examiners in the profession of the applicant, licensee, certificate holder, or registrant with the approval of the department.

Nothing in this section shall be construed to exclude determination of additional conduct that is unprofessional by adjudication in individual contested cases.

Source: Laws 1927, c. 167, §47, p. 466; C.S. 1929, §71-602; Laws 1935, c. 141, §1, p. 518; C.S. Supp., 1941, §71-602; Laws 1943, c. 146, §11, p. 542; R.S. 1943, §71-148; Laws 1979, LB 95, §2; Laws 1981, LB 466, §1; Laws 1986, LB 286, §46; Laws 1986, LB 579, §38; Laws 1986, LB 926, §25; Laws 1987, LB 473, §16; Laws 1988, LB 273, §9; Laws 1988, LB 1100, §17; Laws 1991, LB 425, §11; Laws 1991, LB 456, §11; Laws 1993, LB 536, §45; Laws 1994, LB 1210, §27; Laws 1997, LB 23, §5. Effective date June 10, 1997.

71-150. License, certificate, or registration; director; jurisdiction; denial; refuse renewal; discipline; procedure.

(1) The Director of Regulation and Licensure shall have jurisdiction of proceedings (a) to deny the issuance of a license, certificate, or registration, (b) to refuse renewal of a license, certificate, or registration, and (c) to discipline a licensee, certificate holder, or registrant.

(2) To deny or refuse renewal of a license, certificate, or registration, the department shall send the applicant, licensee, certificate holder, or registrant, by registered or certified mail, notice setting forth the action taken and the reasons for the determination. The denial or refusal to renew shall become final thirty days after mailing the notice unless the applicant, licensee, certificate holder, or registrant, within such thirty-day period, gives written notice of his or her desire for a hearing. The hearing shall be conducted in accordance with the Administrative Procedure Act.

(3) In order for the director to discipline a licensee, certificate holder, or registrant, a petition shall be filed by the Attorney General in all cases. The petition shall be filed in the office of the director. The department may withhold a petition for discipline or a final decision from public access for a period of five days from the date of filing the petition or the date the decision is entered or until service is made, whichever is earliest.

Source: Laws 1927, c. 167, §49, p. 467; C.S. 1929, §71-604; R.S. 1943, §71-150; Laws 1986, LB 286, §48; Laws 1986, LB 579, §40; Laws 1988, LB 1100, §19; Laws 1991, LB 456, §12; Laws 1994, LB 1210, §29; Laws 1996, LB 1044, §382. Operative date January 1, 1997.

71-151. License, certificate, or registration; revocation or suspension; duties of Attorney General and county attorney. The Attorney General shall comply with such directions of the Department of Health and Human Services Regulation and Licensure or of the Director of Regulation and Licensure and prosecute such action on behalf of the state, but the county attorney of any county where a licensee, certificate holder, or registrant has practiced, at the request of the Attorney General or of the department, shall appear and prosecute such action.

Source: Laws 1927, c. 167, §50, p. 467; C.S. 1929, §71-605; R.S. 1943, §71-151; Laws 1986, LB 286, §49; Laws 1986, LB 579, §41; Laws 1994, LB 1210, §30; Laws 1997, LB 307, §117. Operative date July 1, 1997.

71-152. License, certificate, or registration; revocation or suspension; petition; form; other pleadings. The following rules shall govern the form of the petition in cases brought pursuant to section 71-150:

(1) The state shall be named as plaintiff and the licensee, certificate holder, or registrant as defendant;

(2) The charges against the licensee, certificate holder, or registrant shall be stated with reasonable definiteness;

(3) Amendments may be made as in ordinary actions in the district court; and

(4) All allegations shall be deemed denied, but the licensee, certificate holder, or registrant may plead thereto if he or she desires.

Source: Laws 1927, c. 167, §51, p. 467; C.S. 1929, §71-606; R.S. 1943, §71-152; Laws 1986, LB 286, §50; Laws 1986, LB 579, §42; Laws 1994, LB 1210, §31. Operative date July 16, 1994.

71-153. License certificate, or registration; discipline; hearing; time; place. Upon the presentation of the petition to the Director of Regulation and Licensure, he or she shall make an order fixing the time and place for the hearing, which shall not be less than thirty nor more than sixty days thereafter.

Source: Laws 1927, c. 167, §52, p. 468; C.S. 1929, §71-607; R.S. 1943, §71-153; Laws 1986, LB 926, §27; Laws 1996, LB 1044, §383. Operative date January 1, 1997.

71-154. License, certificate, or registration; revocation or suspension; hearing; notice; how served. Notice of the filing of a petition pursuant to section 71-150 and of the time and place of hearing shall be served upon the licensee, certificate holder, or registrant at least ten days before the hearing. The notice may be served by any method specified in section 25-505.01, or the director may permit substitute or constructive service as provided in section 25-517.02 when service cannot be made with reasonable diligence by any of the methods specified in section 25-505.01.

Source: Laws 1927, c. 167, §53, p. 468; C.S. 1929, §71-608; R.S. 1943, §71-154; Laws 1986, LB 286, §51; Laws 1986, LB 579, §43; Laws 1991, LB 456, §13; Laws 1994, LB 1210, §32. Operative date July 16, 1994.

71-155. Credential; disciplinary action; proceedings; hearing; how conducted; Director of Regulation and Licensure; powers; order; effect. (1) The proceeding under section 71-150 shall be summary in its nature and triable as an equity action and shall be heard by the Director of Regulation and Licensure or by a hearing officer designated by the director under rules and regulations of the department. Affidavits may be received in evidence in the discretion of the director or hearing officer. The department shall have the power to administer oaths, to subpoena witnesses and compel their attendance, and to issue subpoenas duces tecum and require the production of books, accounts, and documents in the same manner and to the same extent as the district courts of the state. Depositions may be used by either party. Upon the completion of any hearing held under this section, the director shall, if the petition is brought with respect to subdivision (15) of section 71-148, make findings as to whether the licensee's conduct was necessary to save the life of a mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life-endangering physical condition caused by or arising from the pregnancy itself, and shall have the authority through entry of an order to exercise in his or her discretion any or all of the following powers, irrespective of the petition:

- (a) Issue a censure against the credentialed person;
- (b) Place the credentialed person on probation;
- (c) Place a limitation or limitations on the credential and upon the right of the credentialed person to practice the profession to such extent, scope, or type of practice, for such time, and under such conditions as are found necessary and proper;
- (d) Impose a civil penalty not to exceed twenty thousand dollars. The amount of the penalty shall be based on the severity of the violation;
- (e) Enter an order of suspension of the credential;
- (f) Enter an order of revocation of the credential; and
- (g) Dismiss the action.

(2) If the director determines that guilt has been established, the director may, at his or her discretion, consult with the professional board for the profession involved concerning sanctions to be imposed or terms and conditions of the sanctions. When the director consults with a professional board, the credentialed person shall be provided with a copy of the director's request, the recommendation of the board, and an opportunity to respond in such manner as the director determines.

(3) The credentialed person shall not engage in the practice of a profession after a credential to practice such profession is revoked or during the time for which it is suspended. If a credential is suspended, the suspension shall be for a definite period of time to be set by the director. The director may provide that the credential shall be automatically reinstated upon expiration of such period, reinstated if the terms and conditions as set by the director are satisfied, or reinstated subject to probation or limitations or conditions upon the practice of the credentialed person. If such credential is revoked, such revocation shall be for all times, except that at any time after the expiration of two years, application may be made for reinstatement pursuant to section 71-161.04.

Source: Laws 1927, c. 167, § 54, p. 468; C.S. 1929, § 71-609; Laws 1943, c. 150, § 13, p. 544; R.S. 1943, § 71-155; Laws 1976, LB 877, § 3; Laws 1984, LB 481, § 20; Laws 1986, LB 286, § 52; Laws 1986, LB 579, § 44; Laws 1986, LB 926, § 28; Laws 1988, LB 1100, § 20; Laws 1991, LB 456, § 14; Laws 1994, LB 1210, § 33; Laws 1994, LB 1223, § 7; Laws 1996, LB 1044, § 384; Laws 1997, LB 23, § 6; Laws 1999, LB 828, § 43. Effective date August 28, 1999.

71-155.01. Contested cases; chief medical officer; duties. If a chief medical officer is appointed pursuant to section 81-3201, he or she shall perform the duties of the Director of Regulation and Licensure for decisions in contested cases under sections 71-150, 71-153 to 71-155, 71-156, 71-161.02, 71-161.03, 71-161.07, 71-161.11 to 71-161.15, 71-161.17, 71-161.18, 71-161.20, 71-1,104, 71-1,142, 71-1,147.31, 71-1,147.44, and 71-1,147.45.

Source: Laws 1997, LB 622, § 78; Laws 2001, LB 398, § 21; Laws 2003, LB 245, § 11. Operative date January 1, 2004.

71-155.02. Repealed. Laws 1988, LB 1100, §185.

71-155.03. Civil penalty; manner of collection. Any civil penalty assessed and unpaid under section 71-155 shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property. The department shall, within thirty days from receipt, transmit any collected civil penalty to the State Treasurer for deposit in the Permanent School Fund.

Source: Laws 1986, LB 926, §29. Effective date April 19, 1986.

71-156. License, certificate, or registration; revocation, suspension, or other disciplinary action; hearing; failure to appear; effect. In case the licensee, certificate holder, or registrant fails to appear, either in person or by counsel at the time and place designated in the notice required by section 71-154, the Director of Regulation and Licensure after receiving satisfactory evidence of the truth of the charges shall order the license, certificate, or registration revoked or suspended or shall order any or all of the other appropriate disciplinary measures authorized by section 71-155 to be taken against the licensee, certificate holder, or registrant.

Source: Laws 1927, c. 167, §55, p. 468; C.S. 1929, §71-610; R.S. 1943, §71-156; Laws 1976, LB 877, §4; Laws 1986, LB 286, §54; Laws 1986, LB 579, §46; Laws 1994, LB 1210, §34; Laws 1996, LB 1044, §385. Operative date January 1, 1997.

71-157. Costs; how taxed. If the order issued pursuant to section 71-156 is adverse to the credential holder, the costs shall be charged to him or her as in ordinary civil actions in the district court, but if the state is the unsuccessful party, the costs shall be paid out of any money in the Professional and Occupational Credentialing Cash Fund available for that purpose. Witness fees and costs may be taxed according to the rules prevailing in the district court.

Source: Laws 1927, c. 167, § 56, p. 468; C.S. 1929, § 71-611; R.S. 1943, § 71-157; Laws 1986, LB 286, § 55; Laws 1986, LB 579, § 47; Laws 1994, LB 1210, § 35; Laws 1996, LB 1044, § 386; Laws 1997, LB 307, § 118; Laws 2003, LB 242, § 21. Operative date July 1, 2004.

71-158. Costs; when not collectible; how paid. All costs accrued at the instance of the state when it is the successful party, which the Attorney General certifies cannot be collected from the defendant, shall be paid out of any available funds in the Professional and Occupational Credentialing Cash Fund.

Source: Laws 1927, c. 167, § 57, p. 468; C.S. 1929, § 71-612; R.S. 1943, § 71-158; Laws 1996, LB 1044, § 387; Laws 1997, LB 307, § 119; Laws 2003, LB 242, § 22. Operative date July 1, 2004.

71-159. Appeal; procedure. Both parties shall have the right of appeal, and the appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1927, c. 167, §58, p. 469; C.S. 1929, §71-613; Laws 1943, c. 150, §14, p. 544; R.S. 1943, §71-159; Laws 1976, LB 877, §5; Laws 1988, LB 352, §113. Operative date July 1, 1989.

71-160. Licenses; revocation or suspension; appeal; hearing; time. The cause shall be heard at a time fixed by the district court. It shall be advanced and take precedence over all other cases upon the court calendar except compensation and criminal cases.

Source: Laws 1927, c. 167, §59, p. 469; C.S. 1929, §71-614; Laws 1943, c. 150, §15, p. 545.

71-161. Repealed. Laws 1988, LB 352, §190.

71-161.01. Conviction, what constitutes; defined; disciplinary measures; when effective. A plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge shall be deemed to be a conviction within the meaning of sections 28-409, 71-147, 71-3,174, 71-3,175, and 71-2041.02. The term conviction within the meaning of such sections shall mean a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof and shall include instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation. Pursuant to such sections, a license, permit, certificate, or registration, including one of a temporary nature, may be denied, refused renewal, limited, suspended, or revoked or have other disciplinary measures taken against it in accordance with section 71-155 when the time for appeal of the conviction has elapsed or the conviction has been affirmed on appeal or an order granting probation is made suspending the imposition or the execution of sentence, irrespective of any subsequent order under any statute allowing such person to withdraw his or her plea of guilty, nolo contendere, or non vult contendere and to enter a plea of not guilty, or setting aside the verdict of guilty or the conviction, or releasing the person from probation, or dismissing the accusation, information, or indictment.

Source: Laws 1976, LB 877, §6; Laws 1978, LB 748, §36; Laws 1986, LB 318, §142; Laws 1988, LB 693, §1; Laws

1988, LB 1100, §21. The changes made by LB 1100 became operative April 8, 1988. The changes made by LB 693 became effective July 9, 1988.

71-162.02. Variable costs of credentialing. Variable costs of credentialing are the costs that are unique to a specific profession or occupation listed in section 71-162 and include the following:

- (1) Per diems which are paid to members of the appropriate board;
 - (2) Operating costs that are specific to a particular profession or occupation, including publications, conference registrations, and subscriptions;
 - (3) Costs for travel by members of the appropriate board and employees of the department related to a particular profession or occupation, including car rental, gas, and mileage charges but not salaries;
 - (4) Costs to operate and administer the Nebraska Center for Nursing, which costs shall be derived from credentialing fees of registered and practical nurses in accordance with section 71-1798.01; and
 - (5) Other reasonable and necessary costs as determined by the appropriate board or the department.
- Source: Laws 2003, LB 242, §25; Laws 2005, LB 243, §1. Effective date March 23, 2005.

71-161.03. Petition for disciplinary action; disposition prior to order; methods; Attorney General; duties. (1) Any petition filed with the Director of Regulation and Licensure pursuant to section 71-150 may, at any time prior to the entry of any order by the director, be disposed of by stipulation, agreed settlement, consent order, or similar method as agreed to between the parties. A proposed settlement shall be submitted and considered in camera and shall not be a public record unless accepted by the director. The director may review the input provided to the Attorney General by the board pursuant to subsection (2) of this section. If the settlement is acceptable to the director, he or she shall make it the sole basis of any order he or she enters in the matter, and it may be modified or added to by the director only upon the mutual consent of both of the parties thereto. If the settlement is not acceptable to the director, it shall not be admissible in any subsequent hearing and it shall not be considered in any manner as an admission.

(2) The Attorney General shall not enter into any agreed settlement or dismiss any petition without first having given notice of the proposed action and an opportunity to the appropriate professional board to provide input into the terms of the settlement or on dismissal. The board shall have fifteen days from the date of the Attorney General's request to respond, but the recommendation of the board, if any, shall not be binding on the Attorney General. Meetings of the board for such purpose shall be in closed session, and any recommendation by the board to the Attorney General shall not be a public record until the pending action is complete, except that if the director reviews the input provided to the Attorney General by the board as provided in subsection (1) of this section, the licensee or certificate holder shall also be provided a copy of the input and opportunity to respond in such manner as the director determines.

Source: Laws 1976, LB 877, § 8; Laws 1988, LB 1100, § 22; Laws 1991, LB 456, § 16; Laws 1994, LB 1223, § 8; Laws 1996, LB 1044, § 389; Laws 1999, LB 828, § 44. Effective date August 28, 1999.

71-161.04. Credential; suspended, revoked, or other limitations; petition for reinstatement; when. (1) A person credentialed by the department whose credential has been suspended or has had limitations placed thereon for any reason specified in sections 71-147 and 71-148 may petition the appropriate professional board to recommend the reinstatement of the credential at any time.

(2) A person credentialed by the department whose credential has been revoked for any reason specified in such sections may petition the board to recommend reinstatement after a period of two years has elapsed from the date of revocation.

Source: Laws 1976, LB 877, § 9; Laws 1986, LB 286, § 57; Laws 1986, LB 579, § 49; Laws 1986, LB 926, § 32; Laws 1988, LB 1100, § 23; Laws 1994, LB 1210, § 37; Laws 1999, LB 828, § 45. Effective date August 28, 1999.

71-161.05. Petition for reinstatement of credential; contents; personal; recommendations. Any petition for reinstatement of a credential after revocation of such credential due to nonpayment of renewal fees or noncompliance with continuing competency requirements or after the imposition of any disciplinary action against such credential shall state such pertinent facts as may be required by the board in rules and regulations adopted and promulgated by the department. The petition shall be accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner and two citizens who have personal knowledge of the activities of the petitioner since the credential was revoked or other disciplinary action was imposed.

Source: Laws 1976, LB 877, § 10; Laws 1986, LB 286, § 58; Laws 1986, LB 579, § 50; Laws 1986, LB 926, § 33; Laws 1988, LB 1100, § 24; Laws 1994, LB 1210, § 38; Laws 2002, LB 1021, § 11. Operative date January 1, 2003.

71-161.06. Petition for reinstatement of license, certificate, or registration; when considered and acted upon; hearing; when allowed; procedure. A petition for reinstatement of a license, certificate, or registration shall be considered at the next meeting of the board that is held not earlier than thirty days after the petition was filed. No public hearing need be held on the petition if the board recommends reinstatement of the license, certificate, or registration. Opportunity for a formal public hearing on the petition shall be granted by the board, if formally requested by the petitioner, prior to any

recommendation by the board against reinstatement. Any petition for reinstatement accompanied by the requisite information and necessary documents shall be conclusively acted upon by the board within one hundred eighty days after the filing of the properly prepared petition and necessary accompanying documents with the board. If the petitioner formally requests opportunity for a formal public hearing thereon or if the board otherwise holds such a hearing, the petitioner shall be given at least thirty days' prior notice thereof by sending a copy of the notice of hearing by means of certified or registered mail directed to the petitioner at his or her last-known residence or business post office address as shown by the files or records of the Department of Health and Human Services Regulation and Licensure or as otherwise known or by means of personal service by being personally served by any sheriff or constable or by any person especially appointed by the board. The hearing may be continued from time to time as the board finds necessary.

Source: Laws 1976, LB 877, §11; Laws 1986, LB 286, §59; Laws 1986, LB 579, §51; Laws 1990, LB 1064, §8; Laws 1994, LB 1210, §39; Laws 1996, LB 1044, §390. Operative date January 1, 1997.

71-161.07. Disciplinary actions; recommendation by professional board; appeal. (1) Each professional board shall make a recommendation to the Director of Regulation and Licensure regarding reinstatement following disciplinary action within the board's profession. In determining whether reinstatement should be recommended, the board (a) may request the department to investigate the petitioner to determine if the petitioner has committed acts or offenses prohibited by sections 71-147 and 71-148, (b) may require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the board, the petitioner being free also to consult a physician or physicians of his or her own choice for a complete diagnostic examination and to make available a report or reports thereof to the board, (c) may require the petitioner to pass a written, oral, or practical examination or any combination of such examinations, and (d) may require additional education.

(2) The affirmative vote of a majority of the members of the board shall be necessary to recommend reinstatement of a credential with or without terms, conditions, or restrictions. The board may grant or deny, without a hearing or argument, any petition to recommend reinstatement filed pursuant to section 71-161.04 when the petitioner has been afforded a hearing or an opportunity for a hearing upon any such petition within a period of two years immediately preceding the filing of such petition.

(3) Denial by the board of the petition for recommendation of reinstatement of the license or certificate may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 877, § 12; Laws 1986, LB 286, § 60; Laws 1986, LB 579, § 52; Laws 1988, LB 352, § 114; Laws 1988, LB 1100, § 25; Laws 1991, LB 456, § 17; Laws 1994, LB 1210, § 40; Laws 1996, LB 1044, § 391; Laws 1999, LB 828, § 46. Effective date August 28, 1999.

71-161.08. Repealed. Laws 1988, LB 1100, §185.

71-161.09. Continuing competency requirements; professional board; rules, regulations, and standards; contents. (1) Each professional board shall establish continuing competency requirements for persons engaged in the active practice of the health care profession or occupation for which the board was designated.

(2) The purposes of continuing competency requirements are to ensure (a) the maintenance by a credentialed person of knowledge and skills necessary to competently practice his or her profession or occupation, (b) the utilization of new techniques based on scientific and clinical advances, and (c) the promotion of research to assure expansive and comprehensive services to the public.

(3) The board shall consult with the department and the appropriate professional academies, professional societies, and professional associations in the development of such requirements. The requirements shall be established in rules and regulations approved by the board and adopted and promulgated by the department.

(4)(a) For a profession or occupation for which there are no continuing education requirements on December 31, 2002, the requirements may include, but not be limited to, any one or a combination of the continuing competency activities listed in subsection (5) of this section.

(b) For a profession or occupation for which there are continuing education requirements on December 31, 2002, continuing education is sufficient to meet continuing competency requirements. The requirements may also include, but not be limited to, any one or a combination of the continuing competency activities listed in subdivisions (5)(b) through (5)(o) of this section which a credentialed person may select as an alternative to continuing education.

(5) Continuing competency activities may include, but not be limited to, any one or a combination of the following:

- (a) Continuing education;
- (b) Clinical privileging in an ambulatory surgical center or hospital as defined in section 71-405 or 71-419;
- (c) Board certification in a clinical specialty area;
- (d) Professional certification;
- (e) Self-assessment;
- (f) Peer review or evaluation;
- (g) Professional portfolio;

- (h) Practical demonstration;
- (i) Audit;
- (j) Exit interviews with consumers;
- (k) Outcome documentation;
- (l) Testing;
- (m) Refresher courses;
- (n) Inservice training; or
- (o) Any other similar modalities.

Source: Laws 1976, LB 877, § 14; Laws 1984, LB 481, § 21; Laws 1985, LB 250, § 4; Laws 1986, LB 286, § 62; Laws 1986, LB 579, § 54; Laws 1992, LB 1019, § 38; Laws 1994, LB 1210, § 41; Laws 1999, LB 828, § 47; Laws 2002, LB 1021, § 12. Operative date January 1, 2003.

71-161.10. Continuing competency requirements; documentation of compliance; noncompliance; effect; exemptions; rules and regulations. (1) Each credentialed person in active practice within the state shall, on or before the date of expiration of his or her credential, complete the requirements to document compliance with continuing competency requirements for his or her profession or occupation as specified by rules and regulations approved by the designated professional board and adopted and promulgated by the department pursuant to section 71-161.09. Except as otherwise provided in this section, the department shall not renew the credential of any person who has not complied with such requirements. Procedures for nonrenewal of the credential due to failure to document compliance with continuing competency requirements shall be identical to those for nonpayment of renewal fees as provided in sections 71-110 and 71-149, as well as procedures for reinstatement of the same. In cases other than nonrenewal, the procedures in sections 71-149 and 71-150 for refusal to renew shall apply. The department, on the recommendation of the designated professional board, may waive continuing competency requirements, in whole or in part, upon submission by a credentialed person of documentation that circumstances beyond his or her control have prevented completion of such requirements. Such circumstances shall include situations in which:

- (a) The credentialed person holds a Nebraska credential but is not practicing his or her profession or occupation in Nebraska;
 - (b) The credentialed person has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date;
 - (c) The credentialed person has suffered from a serious or disabling illness or physical disability during the credentialing period immediately preceding the renewal date which prevented completion of the continuing competency requirements; and
 - (d) The credentialed person was first credentialed within the credentialing period immediately preceding the renewal date.
- The department, with the consent of the designated professional board, may adopt and promulgate rules and regulations not inconsistent with this section pertaining to waiver of continuing competency requirements.

(2) Each credentialed person shall be responsible for maintaining in his or her personal files such certificates or records of continuing competency activities received from approved providers.

The designated professional board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credentialed person selected for audit shall be required to produce documentation of the continuing competency activities listed on his or her renewal application.

Source: Laws 1976, LB 877, § 15; Laws 1985, LB 250, § 5; Laws 1986, LB 286, § 63; Laws 1986, LB 579, § 55; Laws 1986, LB 926, § 34; Laws 1994, LB 1210, § 42; Laws 1997, LB 307, § 120; Laws 1999, LB 828, § 48; Laws 2001, LB 209, § 3; Laws 2002, LB 1021, § 13. Operative date January 1, 2003.

71-161.11. License, permit, certificate, or registration; voluntarily surrendered; voluntary limitation; effect. Any license, permit, certificate, or registration issued by the department pursuant to Chapter 28, article 4, or Chapter 71 may be voluntarily surrendered to the department by the holder permanently, for an indefinite period of time to be restored at the discretion of the department, or for a specific and definite period of time as agreed to between the holder and the department with such license, permit, certificate, or registration to be automatically restored upon the expiration of such period of time. Such former holder shall not engage in any of the practices or activities for which such license, permit, certificate, or registration is required during the period of time for which it has been surrendered, shall be considered as unlicensed during such period of time, and shall not be required to pay any fees during such period of time. Any holder of a license, permit, certificate, or registration issued by the department pursuant to Chapter 28, article 4, or Chapter 71 may agree to a voluntary limitation of such license, permit, certificate, or registration. Such limitation may be placed upon the right of the licensee to practice the profession to such extent, for such time, and under such conditions as agreed to by the director and the licensee. All requirements and procedures relative to the validity of a voluntary limitation of practice statement shall be identical to those outlined in this section for a voluntary surrender statement. Violation of any of the conditions of the voluntary limitation of practice statement by the holder shall be due cause for the refusal of renewal of or the suspension or revocation of the license, permit, certificate, or registration by the department.

Source: Laws 1976, LB 877, §16; Laws 1986, LB 926, §35. Effective date April 19, 1986.

71-161.12. License, certificate, or registration; disciplinary actions; additional grounds. In addition to the grounds

for denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration as otherwise provided by law, a license, certificate, or registration to practice any profession or occupation regulated by the Department of Health and Human Services Regulation and Licensure pursuant to Chapter 71 shall be denied, refused renewal, limited, suspended, or revoked automatically by the Director of Regulation and Licensure when the applicant, licensee, certificate holder, or registrant is found to be not qualified to practice the particular profession or occupation for which he or she is applying, licensed, certified, or registered because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability.

Source: Laws 1976, LB 877, § 17; Laws 1986, LB 286, § 64; Laws 1986, LB 579, § 56; Laws 1991, LB 456, § 19; Laws 1996, LB 1044, § 392; Laws 2001, LB 398, § 22. Operative date May 1, 2001.

71-161.13. Complaint alleging dependence or disability; director; investigation; report; review by professional board; finding; effect. When any complaint has been filed with the department by any person or any report has been made to the Director of Regulation and Licensure by the Licensee Assistance Program under section 71-172.01 alleging that an applicant for a credential or a person credentialed to practice any profession or occupation in the state regulated by the department pursuant to Chapter 71 is suffering from habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability, the Director of Regulation and Licensure shall investigate such complaint to determine if any reasonable cause exists to question the qualification of the applicant or credentialed person to practice or to continue to practice such profession or occupation. If the director on the basis of such investigation or, in the absence of such complaint, upon the basis of his or her own independent knowledge finds that reasonable cause exists to question the qualification of the applicant or credentialed person to practice such profession or occupation because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability, the director shall report such finding and evidence supporting it to the appropriate professional board and if such board agrees that reasonable cause exists to question the qualification of such applicant or credentialed person, the board shall appoint a committee of three qualified physicians to examine the applicant or credentialed person and to report their findings and conclusions to the board. The board shall then consider the findings and the conclusions of the physicians and any other evidence or material which may be submitted to that board by the applicant or credentialed person, by the director, or by any other person and shall then determine if the applicant or credentialed person is qualified to practice or to continue to practice such profession or occupation in the State of Nebraska. If such board finds the applicant or credentialed person to be not qualified to practice or to continue to practice such profession or occupation because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability, the board shall so certify that fact to the director with a recommendation for the denial, refusal of renewal, limitation, suspension, or revocation of such credential. The director shall thereupon deny, refuse renewal of, suspend, or revoke the credential or limit the credential of the credentialed person to practice such profession or occupation in the state in such manner and to such extent as the director determines to be necessary for the protection of the public.

Source: Laws 1976, LB 877, § 18; Laws 1986, LB 286, § 65; Laws 1986, LB 579, § 57; Laws 1991, LB 456, § 20; Laws 1996, LB 1044, § 393; Laws 1999, LB 828, § 49; Laws 2001, LB 398, § 23. Operative date May 1, 2001.

71-161.14. Credential; denied or revoked because of physical or mental disability; duration; when issued, returned, or reinstated; manner. The denial, refusal of renewal, limitation, suspension, or revocation of a credential as provided in section 71-161.13 shall continue in effect until reversed on appeal or until the cause of such denial, refusal of renewal, limitation, suspension, or revocation no longer exists and the appropriate professional board finds, upon competent medical evaluation by a qualified physician or physicians, that the applicant, former credentialed person, or credentialed person is qualified to engage in the practice of the profession or occupation for which he or she made application, for which he or she was formerly credentialed, or for which he or she was credentialed subject to limitation and certifies that fact to the Director of Regulation and Licensure. Upon such finding the director, notwithstanding the provision of any other statute, shall issue, return, or reinstate such credential or remove any limitation on such credential if the person is otherwise qualified as determined by the appropriate professional board to practice or to continue in the practice of the profession or occupation.

Source: Laws 1976, LB 877, § 19; Laws 1986, LB 286, § 66; Laws 1986, LB 579, § 58; Laws 1994, LB 1210, § 43; Laws 1996, LB 1044, § 394; Laws 1999, LB 828, § 50. Effective date August 28, 1999.

71-161.15. Refusal to submit to physical or mental examination; effect. Refusal of an applicant or credentialed person to submit to a physical or mental examination requested by the appropriate professional board pursuant to sections 71-161.12 to 71-161.16 to determine his or her qualifications to practice or to continue in the practice of the profession or occupation for which application was made or for which he or she is credentialed by the department pursuant to the provisions of Chapter 71 shall be just cause for denial of the application or for refusal of renewal or suspension of his or her credential automatically by the director until such examination has been made.

Source: Laws 1976, LB 877, § 20; Laws 1986, LB 286, § 67; Laws 1986, LB 579, § 59; Laws 1994, LB 1210, § 44; Laws 1996, LB 1044, § 395; Laws 1999, LB 828, § 51. Effective date August 28, 1999.

71-161.16. Disciplinary action; appeal. Any applicant, licensee, certificate holder, or registrant shall have the right to appeal from an order denying, refusing renewal of, limiting, suspending, or revoking a license, certificate, or registration to practice a profession or occupation regulated by the Department of Health and Human Services Regulation and Licensure pursuant to Chapter 71 because of habitual intoxication or dependence, physical or mental illness, or physical or mental deterioration or disability. Such appeal shall be in accordance with the Administrative Procedure Act.

Source: Laws 1976, LB 877, § 21; Laws 1986, LB 286, § 68; Laws 1986, LB 579, § 60; Laws 1988, LB 352, § 115; Laws 1991, LB 456, § 21; Laws 1996, LB 1044, § 396; Laws 2001, LB 398, § 24. Operative date May 1, 2001.

71-161.17. Licensee, certificate holder, or registrant; mentally ill; automatic suspension; copy of determination of mental illness; termination of suspension; when. (1) The license, certificate, or registration of any person to practice any profession or occupation licensed, certified, or registered by the Department of Health and Human Services Regulation and Licensure pursuant to the provisions of Chapter 71 shall be suspended automatically if he or she is determined by legal process to be mentally ill.

(2) A certified copy of the document evidencing that such a licensee, certificate holder, or registrant has been determined by legal process to be mentally ill shall be transmitted to the Director of Regulation and Licensure as soon as possible following such determination.

(3) A suspension under this section may be terminated by the Director of Regulation and Licensure when he or she receives competent evidence that such former practitioner is not or is no longer mentally ill and is otherwise satisfied, with due regard for the public interest, that such former practitioner's license, certificate, or registration to practice may be restored.

Source: Laws 1976, LB 877, § 22; Laws 1986, LB 286, § 69; Laws 1986, LB 579, § 61; Laws 1994, LB 1210, § 45; Laws 1996, LB 1044, § 397. Operative date January 1, 1997.

71-161.18. Licensee, certificate holder, or registrant; physical or mental incapacity; determination; special department consultant; preliminary report. In determining the physical or mental incapacity of any licensee, certificate holder, or registrant to practice his or her profession, the director may, in addition to the other provisions of sections 71-161.01 to 71-161.19, appoint one person of the same profession as such licensee, certificate holder, or registrant as a special department consultant to compile a preliminary report on such licensee, certificate holder, or registrant for the director.

Source: Laws 1976, LB 877, §23; Laws 1986, LB 286, §70; Laws 1986, LB 579, §62; Laws 1991, LB 456, §22. Effective date September 6, 1991.

71-161.19. Professional board; liability; exemption; when. No member of a professional board for any profession or occupation credentialed by the department pursuant to Chapter 71, no expert retained by such board, and no member of such profession or occupation who provides consultation to or testimony for the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or otherwise for any action taken or recommendation made within the scope of the functions of such board or expert or the consultation or testimony given by such person, if such board member, expert, or person acts without malice and in the reasonable belief that such action, recommendation, consultation, or testimony is warranted by the facts known to him or her after a reasonable effort is made to obtain the facts on which such action is taken, recommendation is made, or consultation or testimony is provided.

Source: Laws 1976, LB 877, § 24; Laws 1986, LB 286, § 71; Laws 1986, LB 579, § 63; Laws 1996, LB 1044, § 398; Laws 1999, LB 828, § 52. Effective date August 28, 1999.

71-161.20. Reinstatement; application; supporting documents; director; powers and duties. (1) An applicant may apply to the Director of Regulation and Licensure for reinstatement only with an affirmative recommendation of the appropriate professional board, and such application to the director may not be received or filed by the director unless accompanied by (a) the written recommendation of the board, including any finding of fact or order of the board, (b) the application submitted to the board, (c) the record of hearing if any, and (d) any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the board and the petitioner.

(2) The director shall then review the application and other documents and may affirm the recommendation of the board and grant reinstatement or may reverse or modify the recommendation if the board's recommendation is (a) in excess of statutory authority, (b) made upon unlawful procedure, (c) unsupported by competent, material, and substantial evidence in view of the entire record, or (d) arbitrary or capricious.

Source: Laws 1991, LB 456, § 18; Laws 1996, LB 1044, § 399; Laws 1999, LB 828, § 53. Effective date August 28, 1999.

FEES

71-162. Credentialing system; administrative costs; how paid. (1) It is the intent of the Legislature that the revenue to cover the cost of the credentialing system administered by the department is to be derived from General Funds, cash funds, federal funds, gifts, grants, or fees from individuals or entities seeking credentials. The credentialing system includes the totality of the credentialing infrastructure and the process of issuance and renewal of credentials, examinations, inspections, investigations, continuing competency, compliance assurance, and the credentialing review process for the following individuals and entities that provide health services and health-related services:

(a) Individuals in the practice of acupuncture; advanced practice nursing; alcohol and drug counseling; asbestos abatement, inspection, project design, and training; athletic training; audiology; speech-language pathology; chiropractic; dentistry; dental hygiene; environmental health; hearing aid instrument dispensing and fitting; lead-based paint abatement, inspection, project design, and training; medical nutrition therapy; medical radiography; medication aide services; medicine and surgery; mental health practice; nursing; nursing assistant or paid dining assistant services; nursing home administration; occupational therapy; optometry; osteopathic medicine; pharmacy; physical therapy; podiatry; psychology; radon detection, measurement, and mitigation; respiratory care; social work; swimming pool operation; veterinary medicine and surgery; water system operation; constructing or decommissioning water wells and installing water well pumps and pumping equipment; and

(b) Individuals in the practice of and entities in the business of body art; cosmetology; electrology; emergency medical services; esthetics; funeral directing and embalming; massage therapy; and nail technology.

(2) The department shall determine the cost of the credentialing system for such individuals and entities by calculating the total of the base costs, the variable costs, and any adjustments as provided in sections 71-162.01 to 71-162.03.

(3) When fees are to be established pursuant to section 71-162.04 for individuals or entities other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the department, upon recommendation of the appropriate board if applicable, shall base the fees on the cost of the credentialing system and shall include usual and customary cost increases, a reasonable reserve, and the cost of any new or additional credentialing activities. For individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment, the Water Well Standards and Contractors' Licensing Board shall establish the fees as otherwise provided in this subsection. All such fees shall be collected as provided in section 71-163.

Source: Laws 1927, c. 167, § 61, p. 469; C.S.1929, § 71-701; Laws 1935, c. 142, § 34, p. 531; Laws 1937, c. 157, § 1, p. 615; Laws 1941, c. 141, § 1, p. 555; C.S.Supp., 1941, § 71-701; Laws 1943, c. 150, § 16, p. 545; R.S.1943, § 71-162; Laws 1953, c. 238, § 3, p. 825; Laws 1955, c. 270, § 2, p. 850; Laws 1957, c. 292, § 1, p. 1048; Laws 1957, c. 298, § 12, p. 1080; Laws 1959, c. 318, § 2, p. 1166; Laws 1961, c. 337, § 8, p. 1054; Laws 1963, c. 409, § 1, p. 1314; Laws 1965, c. 412, § 1, p. 1319; Laws 1967, c. 438, § 4, p. 1350; Laws 1967, c. 439, § 17, p. 1364; Laws 1969, c. 560, § 6, p. 2281; Laws 1969, c. 562, § 1, p. 2288; Laws 1971, LB 300, § 1; Laws 1971, LB 587, § 9; Laws 1973, LB 515, § 3; Laws 1975, LB 92, § 1; Laws 1978, LB 689, § 1; Laws 1978, LB 406, § 12; Laws 1979, LB 4, § 6; Laws 1979, LB 428, § 3; Laws 1981, LB 451, § 8; Laws 1982, LB 263, § 1; Laws 1982, LB 448, § 2; Laws 1982, LB 449, § 2; Laws 1982, LB 450, § 2; Laws 1984, LB 481, § 22; Laws 1985, LB 129, § 12; Laws 1986, LB 277, § 8; Laws 1986, LB 286, § 72; Laws 1986, LB 579, § 64; Laws 1986, LB 926, § 36; Laws 1986, LB 355, § 14; Laws 1987, LB 473, § 18; Laws 1988, LB 1100, § 26; Laws 1988, LB 557, § 20; Laws 1989, LB 342, § 12; Laws 1990, LB 1064, § 9; Laws 1991, LB 703, § 17; Laws 1992, LB 1019, § 39; Laws 1993, LB 187, § 7; Laws 1993, LB 669, § 12; Laws 1994, LB 1210, § 46; Laws 1994, LB 1223, § 9; Laws 1995, LB 406, § 18; Laws 1997, LB 622, § 80; Laws 1999, LB 828, § 54; Laws 2001, LB 270, § 7; Laws 2003, LB 242, § 23; Laws 2004, LB 906, § 2; Laws 2004, LB 1005, § 10; Laws 2004, LB 1083, § 113; Laws 2006, LB 994, § 81. Operative date August 1, 2006.

71-162.01. Base costs of credentialing. Base costs of credentialing are the costs that are common to all professions and occupations listed in section 71-162 and include the following:

(1) Salaries and benefits for employees of the department who work with credentialing activities;

(2) Shared operating costs for credentialing activities that are not specific to a particular profession or occupation such as indirect costs, rent, and utilities;

(3) Costs related to compliance assurance, including investigative costs, contested case costs, and compliance monitoring;

(4) Costs of the Licensee Assistance Program under sections 71-172.01 and 71-172.02;

(5) Capital costs, including office equipment and computer hardware or software, which are not specific to a particular profession or occupation; and

(6) Other reasonable and necessary costs as determined by the department.

Source: Laws 2003, LB 242, § 24. Operative date July 1, 2004.

71-162.02. Variable costs of credentialing. Variable costs of credentialing are the costs that are unique to a specific profession or occupation listed in section 71-162 and include the following:

(1) Per diems which are paid to members of the appropriate board;

(2) Operating costs that are specific to a particular profession or occupation, including publications, conference registrations, and subscriptions;

- (3) Costs for travel by members of the appropriate board and employees of the department related to a particular profession or occupation, including car rental, gas, and mileage charges but not salaries; and
- (4) Other reasonable and necessary costs as determined by the appropriate board or the department.
- Source: Laws 2003, LB 242, § 25. Operative date July 1, 2004.

71-162.03. Adjustments to the cost of credentialing. Adjustments to the cost of credentialing include, but are not limited to:

- (1) Revenue from sources that include, but are not limited to:
- (a) Interest earned on the Professional and Occupational Credentialing Cash Fund, if any;
 - (b) Certification and verification of credentials;
 - (c) Late fees;
 - (d) Administrative fees;
 - (e) Reinstatement fees;
 - (f) General Funds and federal funds;
 - (g) Fees for miscellaneous services, such as production of photocopies, lists, labels, and diskettes;
 - (h) Gifts; and
 - (i) Grants; and
- (2) Transfers to other funds for costs related to the Nebraska Regulation of Health Professions Act and section 71-1,343.
- Source: Laws 2003, LB 242, § 26. Operative date July 1, 2004.

71-162.04. Credentialing fees; establishment and collection. (1) The department, upon recommendation of the appropriate board if applicable, or the Water Well Standards and Contractors' Licensing Board as provided in section 71-162, shall adopt and promulgate rules and regulations to establish and collect the fees for the following credentials:

- (a) Initial credentials, which include, but are not limited to:
- (i) Licensure, certification, or registration;
 - (ii) Add-on or specialty credentials;
 - (iii) Temporary, provisional, or training credentials; and
 - (iv) Supervisory or collaborative relationship credentials;
- (b) Applications to renew licenses, certifications, and registrations;
- (c) Approval of continuing education courses and other methods of continuing competency; and
- (d) Inspections and reinspections.

(2) When a credential will expire within one hundred eighty days after its initial issuance date and the initial credentialing fee is twenty-five dollars or more, the department shall collect twenty-five dollars or one-fourth of the initial credentialing fee, whichever is greater, for the initial credential, and the credential shall be valid until the next subsequent renewal date.

Source: Laws 2003, LB 242, § 27. Operative date July 1, 2004.

71-162.05. Administrative and other fees; amount. (1) The department shall retain a twenty-five-dollar administrative fee from each credentialing fee established under section 71-162.04 for a denied credential or a withdrawn application, except that (a) if the credentialing fee is less than twenty-five dollars, the fee shall be forfeited and (b) an examination fee shall not be returned.

(2) The department shall collect fees for services as follows:

- (a) Ten dollars for a duplicate original or reissued credential;
- (b) Twenty-five dollars for certification of a credential pursuant to section 71-145;
- (c) Five dollars for verification of a credential pursuant to section 71-145;
- (d) A late fee of twenty-five dollars in addition to the renewal fee to renew a credential (i) within thirty days after the credential's expiration date for professions and occupations listed in section 71-162 other than individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment and (ii) within sixty days after the credential's expiration date for individuals in the practice of constructing or decommissioning water wells and installing water well pumps and pumping equipment;
- (e) A late fee of thirty-five dollars in addition to the renewal fee to reinstate a credential for professions and occupations specified in section 71-102 or regulated under the Nebraska Cosmetology Act, the Occupational Therapy Practice Act, or sections 71-4701 to 71-4719 or 71-6053 to 71-6068 not more than one year after the date of revocation for failure to meet the renewal requirements;
- (f) A late fee of seventy-five dollars in addition to the renewal fee to reinstate a credential for professions and occupations specified in section 71-102 or regulated under the Nebraska Cosmetology Act, the Occupational Therapy Practice Act, or sections 71-4701 to 71-4719 or 71-6053 to 71-6068 more than one year after the date of revocation for failure to meet the renewal requirements; and
- (g) Twenty-five dollars for placing a credential on inactive status.

Source: Laws 2003, LB 242, § 28. Operative date July 1, 2004.

71-163. Professional and Occupational Credentialing Cash Fund; created; use; investment. (1) The Professional and Occupational Credentialing Cash Fund is created. Except as provided in sections 71-172.02 and 71-17,113, the fund shall consist of all fees, gifts, grants, and other money, excluding fines and civil penalties, received or collected by the department under sections 71-162 to 71-162.05.

(2) The department shall use the fund for the administration and enforcement of such laws regulating the individuals and entities listed in section 71-162 except for a percentage of the fees credited to the Nebraska Regulation of Health Professions Fund pursuant to section 71-6228.

(3) Any money in the Professional and Occupational Credentialing Cash Fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1927, c. 167, §62, p. 471; C.S.1929, §71-702; R.S.1943, §71-163; Laws 1986, LB 926, §37; Laws 1988, LB 1100, §27; Laws 1994, LB 1210, §47; Laws 2003, LB 242, §30; Laws 2005, LB 146, §10. Effective date September 4, 2005.

VIOLATIONS, CRIMES, PUNISHMENT

71-164. Practicing profession without license, certificate, or registration; injunction. Any person engaging in the practice of any profession, for which a license, certificate, or registration is required by the Uniform Licensing Law, without such license, certificate, or registration may be restrained by temporary and permanent injunctions.

Source: Laws 1927, c. 167, §63, p. 471; C.S. 1929, §71-801; Laws 1943, c. 150, §17, p. 546; R.S. 1943, §71-164; Laws 1994, LB 1210, §48. Operative date July 16, 1994.

71-164.01. Practicing without being credentialed; administrative penalty; procedure. (1) The department may assess an administrative penalty of ten dollars per day for each day that evidence exists of practice prior to issuance, renewal after expiration, or reinstatement of a credential of an individual or entity listed in section 71-162. The total penalty shall not exceed one thousand dollars.

(2) It shall be prima facie evidence of practice without being credentialed when any of the following conditions exist:

- (a) The person admits to engaging in practice;
- (b) Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
- (c) Billing or payment records document the provision of service, care, or treatment by the person;
- (d) Service, care, or treatment records document the provision of service, care, or treatment by the person;
- (e) Appointment records indicate that the person was engaged in practice;
- (f) Water well registrations or other government records indicate that the person was engaged in practice; and
- (g) The person or entity opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

(3) When the department assesses an administrative penalty, the department shall provide written notice of the assessment to the person. The notice shall be delivered in the manner prescribed by the department and shall include notice of the opportunity for a hearing.

(4) The department shall, within thirty days after receipt, transmit an administrative penalty to the State Treasurer for credit to the permanent school fund. An administrative penalty assessed and unpaid under this section shall constitute a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the district court of the county in which the violator resides or owns property.

Source: Laws 2003, LB 242, § 29. Operative date July 1, 2004.

71-165. Filing false documents with department; forgery; penalty. Any person who shall file, or attempt to file, with the Department of Health and Human Services Regulation and Licensure any false or forged diploma or certificate, or affidavit of identification or qualification, shall be deemed guilty of forgery, and upon conviction thereof shall be punished according to the penalties imposed in the statutes relating to that subject.

Source: Laws 1927, c. 167, §64, p. 471; C.S. 1929, §71-802; R.S. 1943, §71-165; Laws 1996, LB 1044, §400. Operative date January 1, 1997.

71-166. False impersonation; fraud; aiding and abetting; penalty. Any person who presents to the department a diploma or certificate of which he or she is not the rightful owner for the purpose of procuring a license, certificate, or registration, who falsely impersonates anyone to whom a license, certificate, or registration has been issued by the department, who falsely holds himself or herself out to be a person licensed, certified, or registered by the department, or who aids and abets another who is not licensed, certified, or registered to practice that profession in practicing a licensed, certified, or registered profession shall be guilty of a Class IV felony.

Source: Laws 1927, c. 167, §65, p. 471; C.S. 1929, §71-803; R.S. 1943, §71-166; Laws 1977, LB 39, §141; Laws 1986,

LB 286, §73; Laws 1986, LB 579, §65; Laws 1986, LB 926, §38; Laws 1994, LB 1210, §49. Operative date July 16, 1994.

71-167. General violations; penalty; second offenses; penalty. Any person violating any of the provisions of the Uniform Licensing Law, except as specific penalties are herein otherwise imposed, shall be guilty of a Class III misdemeanor. Any person for a second violation of any of the provisions of this act wherein another specific penalty is not expressly imposed, shall be guilty of a Class II misdemeanor.

Source: Laws 1927, c. 167, §66, p. 471; C.S. 1929, §71-804; R.S. 1943, §71-167; Laws 1977, LB 39, §142. Operative date January 1, 1979.

ENFORCEMENT PROVISIONS

71-168. Enforcement; investigations; violations; credentialed person; duty to report; cease and desist order; violation; penalty; loss or theft of controlled substance; duty to report; confidentiality; immunity. (1) The department shall enforce the Uniform Licensing Law and for that purpose shall make necessary investigations. Every credentialed person listed under subsection (4) of this section and every member of a professional board shall furnish the department such evidence as he or she may have relative to any alleged violation which is being investigated.

(2) Every credentialed person listed under subsection (4) of this section shall report to the department the name of every person without a credential that he or she has reason to believe is engaged in practicing any profession for which a credential is required by the Uniform Licensing Law. The department may, along with the Attorney General and other law enforcement agencies, investigate such reports or other complaints of unauthorized practice. The professional board may issue an order to cease and desist the unauthorized practice of such profession as a measure to obtain compliance with the applicable credentialing requirements by the person prior to referral of the matter to the Attorney General for action. Practice of such profession without a credential after receiving a cease and desist order is a Class III felony.

(3) Any credentialed person listed under subsection (4) of this section who is required to file a report of loss or theft of a controlled substance to the federal Drug Enforcement Administration shall provide a copy of such report to the department.

(4) Every credentialed person regulated under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law except pharmacist interns, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall, within thirty days of an occurrence described in this subsection, report to the department in such manner and form as the department may require by rule and regulation whenever he or she:

(a) Has first-hand knowledge of facts giving him or her reason to believe that any person in his or her profession has committed acts indicative of gross incompetence, a pattern of negligent conduct as defined in subdivision (5)(e) of section 71-147, or unprofessional conduct, may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability, or has otherwise violated such regulatory provisions governing the practice of the profession;

(b) Has first-hand knowledge of facts giving him or her reason to believe that any person in another profession regulated under such regulatory provisions has committed acts indicative of gross incompetence or may be practicing while his or her ability to practice is impaired by alcohol, controlled substances, narcotic drugs, or physical, mental, or emotional disability. The requirement to file a report under subdivision (a) or (b) of this subsection shall not apply (i) to the spouse of the person, (ii) to a practitioner who is providing treatment to such person in a practitioner-patient relationship concerning information obtained or discovered in the course of treatment unless the treating practitioner determines that the condition of the person may be of a nature which constitutes a danger to the public health and safety by the person's continued practice, or (iii) when a credentialed person who is chemically impaired enters the Licensee Assistance Program authorized by section 71-172.01 except as provided in such section; or

(c) Has been the subject of any of the following actions:

(i) Loss of privileges in a hospital or other health care facility due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment or the voluntary limitation of privileges or resignation from staff of any health care facility when that occurred while under formal or informal investigation or evaluation by the facility or a committee of the facility for issues of clinical competence, unprofessional conduct, or physical, mental, or chemical impairment;

(ii) Loss of employment due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(iii) Adverse judgments, settlements, or awards arising out of professional liability claims, including settlements made prior to suit in which the patient releases any professional liability claim against the credentialed person, or adverse action by an insurance company affecting professional liability coverage. The department may define by rule and regulation what

constitutes a settlement that would be reportable when a credentialed person refunds or reduces a fee or makes no charge for reasons related to a patient or client complaint other than costs;

(iv) Denial of a credential or other form of authorization to practice by any state, territory, or jurisdiction, including any military or federal jurisdiction, due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment;

(v) Disciplinary action against any credential or other form of permit he or she holds taken by another state, territory, or jurisdiction, including any federal or military jurisdiction, the settlement of such action, or any voluntary surrender of or limitation on any such credential or other form of permit;

(vi) Loss of membership in a professional organization due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment; or

(vii) Conviction of any misdemeanor or felony in this or any other state, territory, or jurisdiction, including any federal or military jurisdiction.

(5) A report submitted by a professional liability insurance company on behalf of a credentialed person shall be sufficient to satisfy the credentialed person's reporting requirement under subsection (4) of this section.

(6) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. Any person making a report to the department under this section except those self-reporting shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. Persons who are members of committees established under the Patient Safety Improvement Act and sections 25-12,123, 71-2046 to 71-2048, and 71-7901 to 71-7903 or witnesses before such committees shall not be required to report such activities. Any person who is a witness before a committee established under such sections shall not be excused from reporting matters of first-hand knowledge that would otherwise be reportable under this section only because he or she attended or testified before such committee. Documents from original sources shall not be construed as immune from discovery or use in actions under subsection (4) of this section.

Source: Laws 1927, c. 167, §67, p. 472; C.S.1929, §71-901; R.S.1943, §71-168; Laws 1986, LB 286, §74; Laws 1986, LB 579, §66; Laws 1991, LB 456, §23; Laws 1994, LB 1210, §50; Laws 1994, LB 1223, §10; Laws 1995, LB 563, §2; Laws 1996, LB 414, §1; Laws 1997, LB 138, §42; Laws 1997, LB 222, §4; Laws 1999, LB 828, §55; Laws 2000, LB 1115, §12; Laws 2005, LB 256, §21; Laws 2005, LB 306, §3; Laws 2005, LB 361, §32; Laws 2005, LB 382, §5. Note: The changes made by LB 361 became effective April 28, 2005. The changes made by LB 382 became operative May 7, 2005. The changes made by LB 306 became effective September 4, 2005. The changes made by LB 256 became operative July 1, 2007.

71-168.01. Complaint; department; powers and duties; investigation; notices; professional board; recommendation; review by Attorney General; when; confidentiality; immunity; violation; penalty. (1) Any person may make a complaint and request investigation of an alleged violation of the Uniform Licensing Law or rules and regulations issued under such law. The department shall review all complaints and determine whether to conduct an investigation and in making such determination may consider factors such as:

(a) Whether the complaint pertains to a matter within the authority of the department to enforce;

(b) Whether the circumstances indicate that a complaint is made in good faith and is not malicious, frivolous, or vexatious;

(c) Whether the complaint is timely or has been delayed too long to justify present evaluation of its merit;

(d) Whether the complainant may be a necessary witness if action is taken and is willing to identify himself or herself and come forward to testify; or

(e) Whether the information provided or within the knowledge of the complainant is sufficient to provide a reasonable basis to believe that a violation has occurred or to secure necessary evidence from other sources.

A complaint submitted to the department shall be confidential, and a person making a complaint shall be immune from criminal or civil liability of any nature, whether direct or derivative, for filing a complaint or for disclosure of documents, records, or other information to the department.

(2) If the department determines that a complaint will not be investigated, the department shall notify the complainant of such determination. At the request of the complainant, the appropriate professional board may review the complaint and provide its recommendation to the department on whether the complaint merits investigation.

(3) A professional board may designate one of its professional members to serve as a consultant to the department in reviewing complaints and on issues of professional practice that may arise during the course of an investigation. Such consultation shall not be required for the department to evaluate a complaint or to proceed with an investigation. A board may also recommend or confer with a consultant member of its profession to assist the board or department on issues of professional practice.

(4) The department may notify the credentialed person that a complaint has been filed and that an investigation will be conducted except when the department determines that such notice may prejudice an investigation.

(5) The department shall advise the appropriate professional board on the progress of investigations. If requested by the complainant, the identity of the complainant shall not be released to the board. When the department determines that an

investigation is complete, the department shall consult with the board to obtain its recommendation for submission to the Attorney General. In making a recommendation, the board may review all investigative reports and have full access to the investigational file of the department and any previous investigational information in the files of the department on the credentialed person that may be relevant to the investigation, except that reports or other documents of any law enforcement agency provided to the department shall not be available for board review except to the extent such law enforcement agency gives permission for release to the board and reports provided by any other agency or public or private entity, which reports are confidential in that agency's or entity's possession and are provided with the express expectation that the report will not be disclosed, may be withheld from board review. The recommendation of the board shall be made part of the completed investigational report of the department and submitted to the Attorney General. The recommendation of the board shall include, but not be limited to:

- (a) The specific violations of statute, regulation, or both that the board finds substantiated based upon the investigation;
- (b) Matters which the board believes require additional investigation; and
- (c) The disposition or possible dispositions that the board believes appropriate under the circumstances.

(6) If the department and the board disagree on the basis for investigation or if the board recommends additional investigation and the department and board disagree on the necessity of additional investigation, the matter shall be forwarded to the Attorney General for review and determination.

(7) Complaints or investigational records of the department shall not be public records, shall not be subject to subpoena or discovery, and shall be inadmissible in evidence in any legal proceeding of any kind or character except a contested case before the department. Such complaints or records shall be a public record if made part of the record of a contested case before the department. No person, including, but not limited to, department employees and members of a professional board, having access to such complaints or investigational records shall disclose such information in violation of this section, except that the department may exchange such information with law enforcement and other state licensing agencies as necessary and appropriate in the discharge of the department's duties and only under circumstances to ensure against unauthorized access to such information. Violation of this subsection is a Class I misdemeanor.

(8) All meetings of the professional boards or between a board and staff of the department or the Attorney General on investigatory matters shall be held in closed session, including the voting of the board on any matter pertaining to the investigation or recommendation.

Source: Laws 1991, LB 456, § 6; Laws 1993, LB 536, § 46; Laws 1994, LB 1223, § 11; Laws 1999, LB 828, § 56.
Effective date August 28, 1999.

71-168.02. Health care facility, peer review organization, or professional association; violations; duty to report; confidentiality; immunity. (1) A health care facility licensed under the Health Care Facility Licensure Act or a peer review organization or professional association of a health care profession regulated under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to them, including, but not limited to, the identity of the practitioner and patient, when the facility, organization, or association:

- (a) Has made payment due to adverse judgment, settlement, or award of a professional liability claim against it or a licensee, certificate holder, or registrant, including settlements made prior to suit, arising out of the acts or omissions of the licensee, certificate holder, or registrant; or
- (b) Takes action adversely affecting the privileges or membership of a licensee, certificate holder, or registrant in such facility, organization, or association due to alleged incompetence, professional negligence, unprofessional conduct, or physical, mental, or chemical impairment.

The report shall be made within thirty days after the date of the action or event.

(2) A report made to the department under this section shall be confidential and treated in the same manner as complaints and investigative files under subsection (7) of section 71-168.01. The facility, organization, association, or person making such report shall be completely immune from criminal or civil liability of any nature, whether direct or derivative, for filing a report or for disclosure of documents, records, or other information to the department under this section. The reports and information shall be subject to the investigatory and enforcement provisions of the regulatory provisions listed in subsection (1) of this section. Nothing in this subsection shall be construed to require production of records protected by section 25-12,123, 71-2048, or 71-7903 or patient safety work product under the Patient Safety Improvement Act except as otherwise provided in any of such sections or such act.

(3) For purposes of this section, the department shall accept reports made to it under the Nebraska Hospital-Medical Liability Act or in accordance with national practitioner data bank requirements of the federal Health Care Quality Improvement Act of 1986, as amended, and may require a supplemental report to the extent such reports do not contain the information required by rules and regulations of the department.

Source: Laws 1994, LB 1223, §12; Laws 1995, LB 563, §3; Laws 1996, LB 414, §2; Laws 1997, LB 138, §43; Laws 1997, LB 222, §5; Laws 2000, LB 819, §84; Laws 2000, LB 1115, §13; Laws 2005, LB 256, §22; Laws 2005, LB 361, §33. Note: The changes made by LB 361 became effective April 28, 2005. The changes made by LB 256 became operative July 1, 2007.

71-169. Rules and regulations; department; adopt. The Department of Health and Human Services Regulation and Licensure shall promulgate necessary rules and regulations and forms for carrying out the provisions of the Uniform Licensing Law. It may also adopt rules and regulations supplementing any of the provisions herein contained but not inconsistent therewith.

Source: Laws 1927, c. 167, §68, p. 472; C.S. 1929, §71-902; R.S. 1943, §71-169; Laws 1996, LB 1044, §401. Operative date January 1, 1997.

71-170. Statutes and rules; printing; duty of department. The department shall have printed in pamphlet form for each profession the following matter which is pertinent to the particular profession for which such pamphlet is published: (1) The law regulating the practice of the profession; (2) the rules of the department relative to credentials; and (3) the rules relating to examinations adopted by the department on the recommendation of the professional board.

Source: Laws 1927, c. 167, § 69, p. 472; C.S.1929, § 71-903; R.S.1943, § 71-170; Laws 1986, LB 286, § 75; Laws 1986, LB 579, § 67; Laws 1994, LB 1210, § 51; Laws 1996, LB 1044, § 402; Laws 1999, LB 828, § 57. Effective date August 28, 1999.

71-171. Violations; prosecution; duty of Attorney General and county attorney. Upon the request of the department, the Attorney General shall institute in the name of the state the proper civil or criminal proceedings against any person regarding whom a complaint has been made, charging him or her with violation of any of the provisions of the Uniform Licensing Law, and the county attorney, at the request of the Attorney General or of the department, shall appear and prosecute such action when brought in his or her county.

Source: Laws 1927, c. 167, §70, p. 472; C.S. 1929, §71-904; Laws 1991, LB 456, §24. Effective date September 6, 1991.

71-171.01. Violations; department; Attorney General; powers and duties. The department shall provide the Attorney General with a copy of all complaints it receives and advise the Attorney General of investigations it makes which may involve any possible violation of statutes or rules and regulations by the credentialed person. The Attorney General shall then determine which, if any, statutes, rules, or regulations the credentialed person has violated and the appropriate legal action to take. The Attorney General may: (1) Elect to file a petition under section 71-150 or not to file a petition; (2) negotiate a voluntary surrender or voluntary limitation pursuant to section 71-161.11; or (3) in cases involving a technical or insubstantial violation, refer the matter to the appropriate professional board for the opportunity to resolve the matter by issuance of a letter of concern or to recommend to the Attorney General that he or she enter into an assurance of compliance with the credentialed person in lieu of filing a petition. Neither a letter of concern nor an assurance of compliance shall constitute discipline against a credentialed person.

Source: Laws 1984, LB 481, § 2; Laws 1986, LB 286, § 76; Laws 1986, LB 579, § 68; Laws 1991, LB 456, § 25; Laws 1994, LB 1210, § 52; Laws 1999, LB 828, § 58. Effective date August 28, 1999.

71-171.02. Referral to professional board; letter of concern; assurance of compliance; recommendation. Upon referral of a matter under section 71-171.01 by the Attorney General, the professional board may:

(1) Send to the credentialed person a letter of concern, approved by the Attorney General, which includes a statement of the statute, rule, or regulation in question and a statement advising the credentialed person of the conduct that would violate such statute, rule, or regulation. Such letter shall be signed by the board and shall become a part of the public record of the credentialed person;

(2) Advise the Attorney General on the content of an agreement to serve as the basis of an assurance of compliance. The Attorney General may contact the credentialed person to reach, by voluntary agreement, an assurance of compliance. The assurance shall include a statement of the statute, rule, or regulation in question, a description of the conduct that would violate such statute, rule, or regulation, the assurance of the credentialed person that he or she will not engage in such conduct, and acknowledgment by the credentialed person that violation of the assurance constitutes unprofessional conduct as provided by subdivision (17) of section 71-148. Such assurance shall be signed by the credentialed person and shall become a part of the public record of the credentialed person. The credentialed person shall not be required to admit to any violation of the law and the assurance shall not be construed as such an admission; or

(3) Recommend that the Attorney General file a petition under section 71-150.

Source: Laws 1991, LB 456, § 26; Laws 1994, LB 1210, § 53; Laws 1997, LB 23, § 7; Laws 1999, LB 828, § 59. Effective date August 28, 1999.

71-172. Practice of profession; evidence of. The opening of an office for the practice of any profession for which a

license, certificate, or registration is required by the Uniform Licensing Law, the announcing to the public in any way the intention to practice such profession, the use of any professional degree or designation, or any sign, card, circular, device, or advertisement, as a practitioner of any such profession or as a person skilled in the same, shall be prima facie evidence of engaging in such profession.

Source: Laws 1927, c. 167, §71, p. 473; C.S. 1929, §71-905; R.S. 1943, §71-172; Laws 1994, LB 1210, §54. Operative date July 16, 1994.

LICENSEE ASSISTANCE PROGRAM

71-172.01. Licensee Assistance Program; authorized; participation; immunity from liability; referral; limitation.

(1) The Department of Health and Human Services Regulation and Licensure may contract with the Department of Health and Human Services to provide a Licensee Assistance Program to credential holders regulated by the Department of Health and Human Services Regulation and Licensure. The program shall be limited to providing education, referral assistance, and monitoring of compliance with treatment of habitual intoxication or dependence and shall be limited to voluntary participation by credential holders.

(2)(a) Participation in the program shall be confidential, except that if any evaluation by the program determines that the intoxication or dependence may be of a nature which constitutes a danger to the public health and safety by the person's continued practice or if the person fails to comply with any term or condition of a treatment plan, the program shall report the same to the Director of Regulation and Licensure.

(b) Participation in the program shall not preclude the investigation of alleged statutory violations which could result in disciplinary action against the person's credential or criminal action against the person. Any report from any person or from the program to the Department of Health and Human Services Regulation and Licensure indicating that a credential holder is suffering from habitual intoxication or dependence shall be treated as a complaint against such credential and shall subject such credential holder to discipline under sections 71-150 to 71-155.

(3) No person who makes a report of intoxication or dependence to the program or from the program to the department shall be liable in damages to any person for slander, libel, defamation of character, breach of any privileged communication, or other criminal or civil action of any nature, whether direct or derivative, for making such report or providing information to the program or department in accordance with this section.

(4) Any person who contacts the department for information on or assistance in obtaining referral or treatment of himself or herself or any other person credentialed by the department for habitual intoxication or dependence shall be referred to the program. Such inquiries shall not be used by the department as the basis for investigation for disciplinary action, except that such limitation shall not apply to complaints or any other reports or inquiries made to the department concerning persons who may be suffering from habitual intoxication or dependence or when a complaint has been filed or an investigation or disciplinary or other administrative proceeding is in process.

Source: Laws 1991, LB 456, § 8; Laws 1994, LB 1223, § 13; Laws 1996, LB 1044, § 403; Laws 1997, LB 307, § 121; Laws 2001, LB 398, § 25; Laws 2003, LB 242, § 31. Operative date July 1, 2004.

71-172.02. Fee; Licensee Assistance Cash Fund; created; use; investment. The Department of Health and Human Services Regulation and Licensure shall charge a fee of one dollar per year, in addition to any other fee, for each credential. Such fee shall be collected at the time of issuance or renewal and shall be remitted to the State Treasurer for credit to the Licensee Assistance Cash Fund, which fund is hereby created. Money in the fund shall be used to carry out section 71-172.01. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Source: Laws 1991, LB 456, § 9; Laws 1994, LB 1066, § 65; Laws 1996, LB 1044, § 404; Laws 2003, LB 242, § 32. Operative date July 1, 2004.

INSURER REPORT VIOLATIONS

71-1,198. Terms, defined. For purposes of sections 71-1,198 to 71-1,205, unless the context otherwise requires:

(1) Law enforcement agency means any governmental agency charged by law with carrying out any of the regulatory provisions or any person authorized by law to make arrests within the State of Nebraska;

(2) Practitioner means any person required to be licensed, certified, or registered under the regulatory provisions, whether or not such person is so licensed, certified, or registered; and

(3) Regulatory provisions means the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068.

Source: Laws 1982, LB 421, §1; Laws 1994, LB 1223, §19; Laws 1995, LB 563, §38; Laws 1996, LB 414, §9; Laws 1997, LB 138, §44; Laws 2000, LB 1115, §23; Laws 2005, LB 256, §31. Operative date July 1, 2007.

71-1,199. Insurer; report violation to department; when. Unless such knowledge or information is based on confidential medical records protected by the confidentiality provisions of the federal Public Health Services Act, 42 U.S.C. 290dd-2, and federal administrative rules and regulations:

(1) Any insurer having knowledge of any violation of any of the regulatory provisions governing the profession of the practitioner being reported shall report the facts of such violation as known to such insurer to the department; and

(2) All insurers shall cooperate with the department and provide such information as requested by the department concerning any possible violations by any practitioner.

Source: Laws 1982, LB 421, § 2; Laws 1994, LB 1223, § 20; Laws 1999, LB 828, § 133. Effective date August 28, 1999.

71-1,200. Insurer; report to department; when required. Any insurer shall report to the department, on a form and in the manner specified by the department by rule and regulation, any facts known to the insurer, including, but not limited to, the identity of the practitioner and patient, when the insurer:

(1) Has reasonable grounds to believe that a practitioner has committed a violation of the regulatory provisions governing the profession of such practitioner;

(2) Has made payment due to an adverse judgment, settlement, or award resulting from a professional liability claim against the insurer, a health care facility or health care service as defined in the Health Care Facility Licensure Act, or a practitioner, including settlements made prior to suit, arising out of the acts or omissions of the practitioner;

(3) Takes an adverse action affecting the coverage provided by the insurer to a practitioner due to alleged incompetence, negligence, unethical or unprofessional conduct, or physical, mental, or chemical impairment. For purposes of this section, adverse action shall not include raising a practitioner's rates for professional liability coverage unless it is based upon grounds that would be reportable and no prior report has been made to the department; or

(4) Has been requested by the department to provide information.

The report shall be made within thirty days after the date of the action, event, or request. Nothing in this section or section 71-1,199 shall be construed to require an insurer to report based on information gained due to the filing by a practitioner or on behalf of a practitioner of a claim for payment under his or her health insurance policy.

Source: Laws 1982, LB 421, § 3; Laws 1991, LB 456, § 30; Laws 1994, LB 1223, § 21; Laws 1999, LB 828, § 134; Laws 2000, LB 819, § 93. Operative date January 1, 2001.

71-1,201. Insurer; failure to make report; penalty. Any insurer who fails or neglects to make a report to or provide such information as requested by the department pursuant to section 71-1,199 or 71-1,200 within a reasonable time is guilty of a Class IV misdemeanor, unless such insurer has reported the required facts to a law enforcement agency.

Source: Laws 1982, LB 421, § 4; Laws 1999, LB 828, § 135. Effective date August 28, 1999.

71-1,202. Reports; disclosure restricted. To the extent that such reports contain or relate to privileged communications between patient and practitioner, such reports shall be treated by the department as privileged communications and shall be considered to be part of the investigational records of the department. Such reports may not be obtained by legal discovery proceedings or otherwise disclosed unless the privilege is waived by the patient involved or the reports are made part of the record in a contested case under section 71-154, in which case such reports shall only be disclosed to the extent they are made a part of such record.

Source: Laws 1982, LB 421, §5; Laws 1991, LB 456, §31; Laws 1994, LB 1223, §22. Operative date April 16, 1994.

71-1,203. Reports; subject to Uniform Licensing Law. Any reports made to the department pursuant to the requirements of section 71-1,199 or 71-1,200 shall be subject to the investigatory and enforcement provisions of the Uniform Licensing Law.

Source: Laws 1982, LB 421, §6. Effective date July 17, 1982.

71-1,204. Insurer; immunity from liability. Any insurer or employee of an insurer making a report as required by section 71-1,199 or 71-1,200 shall be immune from criminal penalty of any kind or from civil liability or other penalty for slander, libel, defamation, breach of the privilege between patient and physician or between client and professional counselor, or violation of the laws of the State of Nebraska relating to the business of insurance that may be incurred or imposed on account of or in connection with the making of such report.

Source: Laws 1982, LB 421, §7; Laws 1993, LB 130, §5; Laws 1994, LB 1223, §23. Operative date April 16, 1994.

71-1,205. Reports; violation of practitioner-patient privilege; not required. Nothing contained in sections 71-1,198 to 71-1,205 shall be construed so as to require any practitioner to violate a practitioner-patient privilege.

Source: Laws 1982, LB 421, §8. Effective date July 17, 1982.

REPORTS OF CRIMINAL VIOLATIONS AND PROFESSIONAL LIABILITY JUDGMENTS

71-1,339. Clerk of county or district court; report convictions and judgments of licensees, certificate holders, and registrants; Attorney General or prosecutor; duty. The clerk of any county or district court in this state shall report to the Department of Health and Human Services Regulation and Licensure the conviction of any person licensed, certified, or registered by the department under the Advanced Practice Registered Nurse Licensure Act, the Certified Registered Nurse Anesthetist Act, the Clinical Nurse Specialist Practice Act, the Emergency Medical Services Act, the Licensed Practical Nurse-Certified Act, the Nebraska Certified Nurse Midwifery Practice Act, the Nebraska Cosmetology Act, the Nurse Practice Act, the Nurse Practitioner Act, the Occupational Therapy Practice Act, the Uniform Controlled Substances Act, the Uniform Licensing Law, the Wholesale Drug Distributor Licensing Act, or sections 71-3702 to 71-3715, 71-4701 to 71-4719, or 71-6053 to 71-6068 of any felony or of any misdemeanor involving the use, sale, distribution, administration, or dispensing of a controlled substance, alcohol or chemical impairment, or substance abuse and shall also report a judgment against any such licensee, certificate holder, or registrant arising out of a claim of professional liability. The Attorney General or city or county prosecutor prosecuting any such criminal action and plaintiff in any such civil action shall provide the court with information concerning the licensure, certification, or registration of the defendant or party. Notice to the department shall be filed within thirty days after the date of conviction or judgment in a manner agreed to by the Director of Regulation and Licensure and the State Court Administrator.

Source: Laws 1994, LB 1223, §24; Laws 1995, LB 563, §39; Laws 1996, LB 414, §10; Laws 1996, LB 1044, §480; Laws 1997, LB 138, §45; Laws 2000, LB 1115, §24; Laws 2005, LB 256, §32. Operative date July 1, 2007.